Cas. No. 17,115, to liability for negligence, *American S. S. Co.* v. *Bryan* (1877) 83 Pa. 446, to no liability at all, *Steamboat Crystal Palace* v. *Vanderpool* (1855) 16 B. Mon. 302, and in the case of stateroom baggage, to liability analogous to that of an innkeeper. *Adams* v. *New Jersey Steamboat Co.* (1894) 9 Misc. 25, aff'd 151 N. Y. 163. But there is little authority connecting the source of the liability with that for baggage proper. Indeed, in the face of the fact that there is small danger of fraud, little difficulty of proof, and especially no bailment whatever, it seems clear that the source of this liability must be sought elsewhere than in the cases out of which the liability for baggage grew. In more recent decisions, however, sources are lost sight of, with the result that the two classes of goods are either lumped together loosely as "baggage," *Walsh* v. *The H. M. Wright*, supra, or involved in a complex classification, *Adams* v. *New Jersey Steamboat Co.*, supra. The resulting confusion is well illustrated by the difficulty experienced in a recent New York case, *Holmes* v. *Steamship Co.* (1906) 184 N. Y. 284, in deciding whether a clause in a steamship ticket restricting liability for baggage, should include suit cases, intended by the passenger for personal use in the stateroom, and delivered by him to a steward to be placed there. It was held by a division of four to three that these articles were not to be regarded as baggage within the legal definition of that term nor within the contemplation of the limiting clause of the contract. The dissent expressed by Mr. Justice GRAY as to the character of the goods was based upon the fact that they had been temporarily delivered to a servant of the carrier. But the significance of such a fact as delivery, apart from its purpose, is small, the essential feature being that the carrier must be vested with a bailee's control. *The R. E. Lee* (1870) Fed. Cas. No. 11, 690. Thus in *Merrill* v. *Grinnell* (1864) 30 N. Y. 594, a steamboat company was held liable as an insurer for a trunk placed in the steerage and open to occasional access by the passenger, but otherwise, *Cohen* v. *Furst* (N. Y. 1853) 2 Duer 355, in the case of a trunk kept by the passenger under his berth, though both must have been at one time in the hands of the company's servants. It would appear that the adoption of such a test as this, based upon the attitude which the passenger adopts toward the articles he carries with him, *Wilsons* v. *Hamilton* (1855) 4 Oh. St. 722, is not only consistent with the sources of the law on the point, but conducive to a desirable simplification of it.

THE STATUTE OF LIMITATIONS AS AFFECTING THE POWER OF SALE IN A MORTGAGE.—The history of statutory limitations presents a curious development, beginning, so far as fixed periods are concerned, with the statutes 32 Hen. VIII, c. 2, and 21 James I, c. 16. Unable to get away from previous theories founded on presumptions of payment, Evans' Pothier, 643, 657, the courts were at first strongly inclined to restrict the operation of what they conceived to be a dishonorable defence, based upon derogatory enactments. Wood on Limitations, 4. Modern decisions, however, show a radical departure from this attitude. Mere presumption is raised into a positive bar, well favored by the courts. *Bell* v. *Morrison* (1828) 1 Pet. 351, 360. The reasons underlying the

change are aptly phrased by Story, J., in *Spring* v. *Gray* (1830) 5 Mason 505, 523—"There is wisdom and policy in it, as it quickens the diligence of creditors, and guards innocent persons from being betrayed by their ignorance or overconfidence in regard to transactions which have become dim by age." This tendency to uphold the doctrine of limitations has, in at least one direction, resulted in positive expansion. In personal actions the statute has seldom been regarded as doing more than to destroy the remedy, *Townsend* v. *Tyndale* (1896) 165 Mass. 293; *Campbell* v. *Holt* (1885) 115 U. S. 620; contra, *Pierce* v. *Seymour* (1881) 52 Wis. 272, and such would seem to be the natural import of its terms. But in the case of claims affecting property, the favored view is that the running of the statute not only bars the remedy but destroys the right, thus effecting a change of title. *Baker* v. *Oakwood* (1890) 123 N. Y. 16; *Bicknell* v. *Comstock* (1885) 113 U. S. 149. A part of the doctrine may find legitimate basis in the common law theory that title to land, obtained by disseisin, accrued immediately, the statute of limitations, being pertinent only as it barred the right of re-entry. *Stokes* v. *Berry* (1699) 2 Salk. 421. But when broadly applied to property real and personal it appears to have no other foundation than the general policy of the law to avoid uncertainty and confusion in the matter of property rights. See *Le Roy* v. *Crowinshield* (1820) 2 Mason 151, 164–175. Even so it seems to be properly upheld as a step, like those already noted, in furtherance of the real design of the statutes.

The acceptance or rejection of this theory, that the running of the limitation period destroys the right, becomes important in questions involving a claim secured by power of sale or other disposal. Its rejection in the case of personal claims, *Campbell* v. *Holt*, supra, leads to the doctrine, now generally approved, that the barring of a debt will not prevent sale or foreclosure of a pledge or mortgage given as security. *Hartranft's Appeal* (1893) 153 Pa. 530; *Hough* v. *Bailey* (1864) 32 Conn. 288. On the other hand, its acceptance in connection with property rights, *Baker* v. *Oakwood*, supra, would naturally lead to the opposite result. Thus, in the "equity states," the running of the statute upon a mortgage, under such a theory vests complete title in the mortgagor. *Blue* v. *Everett* (1898) 56 N. J. Eq. 455. And since a power of sale given with a mortgage is nothing more than an ordinary power coupled with an interest, *Varnum* v. *Messerve* (Mass. 1864) 8 Allen 158, when the statute has intervened and destroyed the interest nothing remains but the naked power which can be at once revoked. Accordingly, it would appear, that in law the sale, if met by opposition from which a revocation could be implied, would be invalid.

A recent case, however, in which the New York Court of Appeals, three Justices dissenting, refused to enjoin such a sale, suggests possible limitations to this result. In spite of the fact that by statute such sales were made the legal equivalent of direct foreclosure and the affidavits of sale were "presumptive evidence of matters of fact therein stated," N. Y. Code Civ. Proc. § 2295, the court refused an injunction on the principle that the claimant could not use the statute of limitations as a ground of attack, nor invoke the aid of equity until he had paid the original debt. In view of the close similarity between the statutory

sale and court proceedings to foreclose, it may well be argued that the injunction in such a case is essentially not an attack but a defence. But the second principle that the claimant has no standing until he has paid the surviving debt seems to justify the refusal to enjoin. The result, though it deprives the mortgagor of one of the best means of protecting his regained title, seems unavoidable under the present theories.